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COMMISSION ON HUMAN RIGHTS

Forty-ninth session

SUMMARY RECORD OF THE 10th MEETING

Held at the Palais des Nations, Geneva,
on Monday, 8 February 1993, at 10 a.m.

Chairman: Mr. ENNACEUR (Tunisia)

later: Mr. FLINTERMAN (Netherlands)

later: Mr. GARRETON (Chile)

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The meeting was called to order at 10.15 a.m.

QUESTION OF THE VIOLATION OF HUMAN RIGHTS IN THE OCCUPIED ARAB TERRITORIES, INCLUDING PALESTINE (4) (continued) (E/CN.4/1993/3-E/CN.4/Sub.2/1992/42, E/CN.4/1993/6 - E/CN.4/Sub.2/1992/49, E/CN.4/1993/9, 12, 13, 70 to 74 and 81; A/47/76, A/47/262 and 509; S/25149)

THE RIGHT OF PEOPLES TO SELF-DETERMINATION AND ITS APPLICATION TO PEOPLES UNDER COLONIAL OR ALIEN DOMINATION OR FOREIGN OCCUPATION (9) (continued) (E/CN.4/1993/17, 18, 19 and Add.1; E/CN.4/1992/12; A/47/412)

1. Mrs. MANN (World Organization against Torture), referring to the Declaration on the Granting of Independence to Colonial Countries and Peoples, said she wished to bring to the Commission's attention a number of situations which had given rise to serious concern, namely, those in Tibet, East Timor and Western Sahara. Ever since Chinese troops had entered Tibet in 1950, the Tibetan population had been denied its basic human rights and its right to self-determination. Recently, in 1992, some 17 peaceful demonstrations in favour of Tibetan independence had been cruelly repressed by the Chinese authorities and a large number of Tibetans had been arrested, tortured and ill-treated. The persons accused of having taken part in those demonstrations had been given sentences ranging from 13 to 15 years. Her organization deplored the Chinese Government's decision of August 1992 to open up the Tibet autonomous region economically. The Chinese authorities were settling increasing numbers of Chinese in that region in order to exploit the Tibetan people's natural resources for China's benefit. According to recent information, for example, the Longyan Dam project in north eastern Tibet had involved the transfer of some 100,000 Chinese workers and brought about the internal displacement of 6,000 Tibetans. Her organization called upon the Commission to urge the Chinese authorities to put an end to all human rights violations in Tibet and particularly the torture and ill-treatment of prisoners and detainees, and to respect the Tibetan population's call for self-determination.

2. The situation in East Timor, which had been invaded by Indonesia in 1975, remained a source of concern. According to the most recent figures available, the massacre in the Santa Cruz cemetry had resulted in 273 deaths, 376 persons wounded and 255 disappeared. To date, the only people punished for the massacre were those who had taken part in the demonstration. The first anniversary of the massacre had been marked by many arrests. Security measures had been strengthened on the occasion of the meeting of the non-aligned movement which had been held at Jakarta in September 1992. The presence of the military was strongly felt and, as in the case of Tibet, population transfers had been carried out. According to available information, the Indonesian authorities intended to relocate 425 families from Java during 1992 and 1993; some 100,000 Indonesians had now allegedly been settled in East Timor. The arrest, on 20 November 1992, of Xanana Gusmao, the leader of the Revolutionary Front for Independence (FRETILIN), who may have been tortured, had further exacerbated the situation. It was clear that the resolution adopted by the Sub-Commission on Prevention of Discrimination and the Protection of Minorities at its forty-fourth session on the situation in East Timor had not been respected. The World Organization against Torture therefore called upon the Commission to urge the Indonesian authorities to respect that resolution and to put an end to human rights abuses in East Timor. It further called upon the Indonesian authorities to put an end to the use of torture and ill-treatment and to respect the right of the Timorese people to self-determination.

3. Her organization was also concerned by the situation in Western Sahara following the recent failure of the United Nations peace plan. The Moroccan authorities had embarked upon a vast programme of colonisation, expelling and repressing the Western Saharan people and it was feared that many hundreds were still languishing in prisons and that others had disappeared permanently. In October 1992, the military and police forces of the State of Morocco had carried out acts of uncommon and excessive violence in repressing peaceful demonstrations organized by the Saharan peoples who were calling for the implementation of the United Nations peace plan and the holding of a referendum. Over 300 persons, including women and children, had been arrested and subjected to harassment and torture. Those inhuman acts had taken place before the very eyes of members of the United Nations Mission for the Referendum in Western Sahara. The World Organization against Torture called upon the Commission to urge the Moroccan authorities to put an end to the so-called "second green march" and violations of the human rights of the people of Western Sahara, and to release all those who had been detained. It also called upon the Moroccan authorities to facilitate the access of independent observers to Western Sahara. Lastly, it called upon the Commission to invite the United Nations Security Council to take all necessary measures to ensure the implementation of the peace plan.

4. Gravely concerned by the denial of the right to self-determination of oppressed people by an occupying Power, her organization called upon the Commission to entreat the United Nations Security Council to exercise its powers under Chapter VII of the United Nations Charter and to put in place the necessary mechanisms to ensure that the human rights and fundamental freedoms of the people of Tibet, East Timor and Western Sahara were guaranteed at all times and that those peoples were free to exercise their right to self-determination.

5. Mrs. PONRAJAH (International Educational Development), referring to the situation in Sri Lanka, observed that the Tamil people had been oppressed for decades by the Sinhala majority which refused to share power in the framework of a federal-type regime. During the past several years the Government had tried to break the armed resistance of the Tamil people and Sri Lanka's armed forces had committed serious violations of humanitarian law. The army had recently launched attacks against entire villages in the eastern part of the island and had tortured and killed many of their inhabitants. Those attacks were explained by the declared opposition of the Sri Lankan Government to the merger of the north and east of the island into a single administrative political unit.

6. The Tamils had been living for centuries in the northern and eastern parts of the island, within relatively well-defined geographical boundaries, shared an ancient heritage, a vibrant culture and a language that had originated over 2,500 years previously. Conscious of their identity and struggling against alien domination, they clearly constituted a "people" with the right to self-determination. Consequently, International Education Development requested participants in the Commission's forty-ninth session to give urgent consideration to the question of recognising the existence of a Tamil homeland in the northern and eastern parts of the island and to recognise that the Tamil population constituted a "people" and, as such, was entitled to exercise its right to self-determination.

7. The Commission should also consider the question of the self-determination of the Karen people whose national territory, situated between Myanmar and Thailand, covered an area of about 12,000 km^2 and formed a State with its own

Government and administration. The Karen people had survived for thousands of years despite long periods of oppression under the Burmese, the British and post-colonial regimes, including the current regime that went by the name of State Law and Order Restoration Council (SLORC) which denied them their sovereignty that had nevertheless been recognised by the Burmese Constitution of 1947. The hateful regime installed in Burma that had changed its name to Myanmar was reducing the status of the Karen people to that of a minority. Yet the Karens were not a minority but a people satisfying all the criteria laid down for self-determination, namely, historical independence, an identifiable territory, a distinct culture, language and traditions and a strong national commitment to independence as well as a demonstrated willingness to fight for it. The Karen authorities were respecting the Geneva Conventions of 1949 in their struggle against the Burmese regime and aspired to have their country recognised as a member of the United Nations side by side with a free Burma.

8. Mr. BALIAN (Human Rights Advocates) raised the thorny question of self-determination for "minorities" or "peoples", those two terms being interchanged advisedly. Some of the most serious violations of human rights occurred in situations where a minority or a people decided that it was entitled to self-determination. Regardless whether it was intended to protect the rights of a people or to rectify an illegal or arbitrary territorial arrangement, the right to self-determination usually reflected legitimate aspirations. In most cases such aspirations could be satisfied within the framework of existing States by addressing individual human rights and the right of a minority to develop its separate identity; in others, new States might have to be created or borders changed.

9. In contexts of that kind, the international community tended to urge peaceful co-existence and the maintenance of the status quo, often taking action when it was too late. Possibly it feared, like certain alarmists, that the free exercise of the right to self-determination might threaten the world order or that some 5,000 ethnic groups might claim independence. In view of the importance of the matter, it should adopt a new approach without delay; first of all it should view self-determination in a broader context and in terms of its various possible outcomes, ranging from equal rights, the protection of the rights of minorities, various degrees of autonomy, border changes and secession; secondly, it should take account of all relevant factors namely, historical factors, the position of the dominant group and the ruling Government, the position of the movement claiming self-determination and the possibilities of violence; thirdly, it must do everything to protect the rights of minorities. Moreover, in cases where it was not enough to ensure that such rights were protected, it should be prepared to support the process of self-determination for the threatened minority. In any event, it should make every effort to prevent conflicts, and in that respect the non-governmental organizations and diplomacy could certainly play a major role. Collective economic sanctions could also be considered and, as a last resort, collective military intervention might become a necessity in order to keep the peace, provide humanitarian aid, defend the emerging State or protect a representative central Government threatened by chaos.

10. The international community could also review some of its procedures and create new bodies to cope with problems raised by the right to self-determination. For example, the Trusteeship Council could be revived and the International Court of Justice could identify the legal principles governing the right to self-determination or become a body responsible for the prevention of conflicts. Or possibly a working group of the Commission could help to

determine how demands for self-determination should be handled. The international law concepts of "minority rights" and "self-determination" had evolved considerably since the two studies on the question had been prepared by the Sub-Commission's special rapporteurs, namely, Mr. Capatorti and Mr. Critescu in 1979 and 1981. The Sub-Commission's report on "Possible ways and means of facilitating the peaceful and constructive solutions of problems involving minorities" (E/CN.4/Sub.2/1992/37) envisaged only the maintenance of the status quo, so that a new study on the rights of minorities and the right to self-determination would be most useful.

11. Mr. TABIBI (World Islamic Call Society) noted that the principle of self-determination was one of the basic principles of jus cogens. His Society was deeply concerned by the number of violations of that right in all continents. As the United States representative had said, the word self-determination could now be heard from everyone's mouth despite the fact that the concept it embodied was not very old and had begun to develop only after the First World War.

12. The right was not immutable, however; it was shaped and evolved according to the needs of mankind at various stages of history. The right to self-determination was the cornerstone of decolonization. Just like slavery, genocide and apartheid, denial of the right to self-determination for political or economic reasons was regarded as a serious international crime. It could be considered that that right was denied to peoples of Palestine, Kashmir, Bosnia and Herzegovina and South Africa.

13. The World Islamic Call Society deplored the fact that those who suffered most from violations of human rights and the right to self-determination were Muslims, whether in Afghanistan, Kashmir, Palestine, Burma, Africa, Somalia, Bosnia and Herzegovina, Macedonia or other parts of the world. Not a single day passed without reports that Muslims had been massacred somewhere, as in India for example. What had happened in Afghanistan 14 years previously, or in Kashmir, Bosnia and Herzegovina or yet in other parts of the Islamic world, constituted a denial of the right of the Muslim people to self-determination and was tantamount to a modern crusade against Islam. Many civilizations came and went but only those based on justice remained.

14. Mr. RETUREAU (World Federation of Trade Unions) expressed deep concern about the violations of the rights of peoples to self-determination that were taking place. New and extremely grave crisis situations had recently emerged, particularly in Europe, the Caucasus and in Asia, in addition to those already in existence such as those involving the occupied Arab territories, the Kurds, East Timor, Western Sahara and Cambodia.

15. The latter country was not subject to foreign occupation but the Khmer Rouge had once again become a threat. Denouncing the so-called Vietnamese occupation, they called for pogroms against the Vietnamese minority and the danger of a second genocide was not to be excluded should they succeed to derail the peace process that had been initiated and prevent the Cambodian people from expressing their wishes. Repression and massacres were continuing in East Timor, which was still illegally occupied by Indonesia. In Western Sahara, the process that was to lead to the free exercise of the right to self-determination by the Sahraoui people was being seriously hampered by Morocco, which was trying to prevent the referendum from taking place democratically and in satisfactory

conditions. Nor had any acceptable solution yet been found to the Kurdish question, and the Kurds were subject to ethnic and cultural discrimination. The Turkish Government, which had stated that it intended to embark upon a policy leading to the recognition of Kurdish identity, was now handling the situation in the same way as its predecessors, namely, by violence, repression, torture, a scorched earth policy and human rights violations.

16. The criterion of occupation or colonial or foreign domination was often difficult to identify in many cases of inter-ethnic conflict, civil war, and the fragmentation of former unitary States, since certain new States were recognised whereas other national, ethnic or ethnic and religious units were not. In that context, the World Federation wished to recall that it supported peaceful and negotiated solutions that respected the right of peoples and their interests. War was all the more terrible when it took place, owing to a complex and at times tragic history, in regions where various communities had been linked or blended together for centuries. Certain Governments had, moreover, brought latent problems to a head by recognizing frontiers which were of an essentially administrative and not national - and even less international - nature and by allowing the formation of countries on the basis of criteria which confused ethnic groups and nations, thereby reviving a primitive and incoherent view of nationality which had already been responsible for so much bloodshed in the history, both ancient and modern, of Europe. The countries which had thus prematurely recognised new States had helped to create chaos and conflicts bearing the seeds of the odious practice of ethnic cleansing, internment camps and even concentration camps. Armed militia were daily committing war crimes against civilian populations and the opposing armed forces.

17. The World Federation of Trade Unions appealed to States and to the communities concerned as well as to the United Nations to join their efforts in seeking, as a matter of urgency, equitable solutions to those conflicts that would be in conformity with the right of peoples, human rights and international law.

18. Mr. KOTHARI (Habitat International Coalition) said that, although the planning process and related settlement and housing policies might not seem directly relevant to human rights and situations of occupation and colonial domination, they were nevertheless related to the protection of human rights and the right of peoples to self-determination. That was precisely why China and Israel had accorded planning policies such a key role within their strategies designed to suppress the legitimate demands of the Tibetan and Palestinian peoples. Indeed, for millions of Tibetans and Palestinians, the planning system had meant the destruction of their houses, the implantation of hundreds of thousands if not millions of settlers and, consequently, a considerable reduction in their possibilities of participating in the development of their homeland. China and Israel were using the tool of planning to establish settlements, which entailed population transfers, confiscation of land, demolitions, expulsions and the destruction of housing, restrictions on residence permits etc. to stifle the right of Tibetans and Palestinians to determine their own destiny. The population transfer policy, which was contrary to article 49 (6) of the Fourth Geneva Convention that the Chinese and Israeli Governments had ratified, was practised systematically in the occupied territories of Palestine and Tibet. Should the Israeli Government continue to ignore the many appeals by the United Nations to halt the implantation of settlers in the occupied territories, there would be over 500,000 Israeli settlers beyond the "green line" by 1995. The Chinese Government's population transfer policy in Tibet had assumed even more awesome proportions and Tibetans

had become a minority in many parts of their country. During the summer of 1992, for example, 100,000 Chinese settlers had arrived in Tibet.

19. Population transfers and illegal settlement and construction policies were essentially inseparable. The Israeli Housing Ministry intended housing over 400,000 persons in the West Bank within the next four years. In 1990, 100 units had been constructed for Arabs whereas almost 20,000 had been built for the Jewish sector, thereby exposing the existence of discriminatory practices in violation of the housing rights obligations Israel had assumed under article 11 of the International Covenant on Economic, Social and Cultural rights. Similarly, so-called "new towns", built almost exclusively for Chinese settlers, now dominated virtually all urban centres in Tibet. The Tibetans were therefore victims of acute discrimination in the housing field - a fact that had been recognised by the Committee on the Elimination of Racial Discrimination in 1990. Town planning projects for Lhasa for the year 2000 made no provision for Tibetan districts, which revealed a determination to eradicate all Tibetan influence in the sacred capital of Tibet.

20. Furthermore, between 1989 and 1991, 1,648 Arab homes have been destroyed in the West Bank and Gaza and 260,000 house demolition orders had been served inside the "green line" in violation of article 53 of the Fourth Geneva Convention. In Tibet, during the first few months of 1990, over 10 per cent of traditional Tibetan housing had been demolished, thereby leaving 4,000 Tibetans homeless. In September 1992, over 2,000 nomads had been expelled from their camp site in Lhasa so that the construction of housing for new settlers from China could commence. The sealing of houses or the arbitrary eviction of the occupants as punitive measures for the expression of political views were further common features of Israeli and Chinese practices. The right to choose one's residence was flouted both in Tibet as well as Palestine. Tibetans found it very difficult to obtain permits to establish residence in urban centres, and families were often prevented from coming together. In contrast, Chinese settlers found it easy to obtain residence permits for their families and, unlike the Tibetans, did not have to pay huge bribes to obtain them. The Israeli authorities were resettling the Palestinians in enclaves around the West Bank in a manner that reflected the "Bantustan" system in South Africa. Under the Markovitz plan of 1986, 176 Arab villages situated within the borders of the State of Israel were earmarked for demolition. Tibetans lacked any meaningful control over their economy and its development. They had no say in the major development projects which, moreover, were intentionally designed to wipe out their culture and identity for the benefit of the Chinese.

21. Israel and China were therefore systematically violating many of the principles embodied in the Fourth Geneva Convention. While five Security Council resolutions, 15 General Assembly resolutions and numerous others had condemned Jewish settlement in the occupied territories, China's policy in Tibet had escaped the attention of the international community. The time had therefore come to condemn China's colonial practices unequivocally. What was at stake was the credibility of the Commission on Human Rights, which must not be accused of complicity with one country whereas it condemned others for similar acts.

22. Mr. FORSTER (International Work Group for Indigenous Affairs) said that the blockade imposed on the island of Bougainville for three and a half years, as well as the inhuman conditions prevailing there, were in complete violation of its inhabitants' right to self-determination. Australia and Papua New Guinea

had tried to keep the genocide on Bougainville a secret and to minimize the concerns of the international community which nevertheless expressed concern about the situation through the Committee on the Elimination of Racial Discrimination, the Sub-Commission on Prevention of Discrimination and the Protection of Minorities, the European Community, the Group of African, Caribbean and Pacific States, the International Commission of Jurists, the World Council of Churches and ICRC. All those bodies had expressed concern about human rights violations in Bougainville, called for the lifting of the blockade and an independent fact-finding mission with a view to the peaceful settlement of the conflict. The Government of Papua New Guinea had refused to allow access to the areas concerned and the continuing crisis constituted a threat to the security of the entire region. Two representatives of the United Nations who had been sent by the Secretary-General to look into the situation had been refused permission to visit Papua New Guinea and Bougainville by the Government of Papua New Guinea. Since October 1992, the government forces which had been trying to take the capital Arawa by force had been responsible for two deaths and several wounded among the civilian population. Papua New Guinea's army had hired mercenaries in order to create a civil war situation on the island, where fighting was now general. Since the island's rugged terrain was not conducive to military conquest, the resistance of the islanders would continue until they achieved the right to freely determine their own future. Papua New Guinea was using methods condemned by international law in order to subdue Bougainville; it was destroying villages, transferring population to centres under military control, using chemical weapons and depriving the islanders of medical facilities, education and all economic and cultural rights.

23. Although it was a signatory of the Convention on the Prevention and Punishment of the Crime of Genocide, the Government of Papua New Guinea was certainly practising genocide. The resolution adopted in October 1992 by the Joint Assembly of the European Community and the Group of African, Caribbean and Pacific States, which had been supported by the Papua New Guinea Minister of Foreign Affairs, had remained a dead letter since the Government of Papua New Guinea had not sent a formal invitation to the bodies responsible for organizing a joint fact-finding mission in the region.

24. The Commission on Human Rights must associate itself with the many requests being made that a fact-finding mission should be sent to Bougainville since otherwise it would be an accomplice to genocide that could easily have been averted. The right to self-determination of the island's inhabitants should be restored and the United Nations should make every effort to restore peace and democracy on the island. The decentralization of power should be decided upon by the people, and for that reason he suggested that the Commission should establish a working group to prepare a convention on self-determination.

25. Mrs. FARHI (International Council of Jewish Women) pointed out that, although the right of peoples to self-determination was embodied in article 1 of the two International Covenants, it was mentioned neither in the Universal Declaration of Human Rights nor in the European Convention for the Protection of Human Rights and Fundamental Freedoms. Yet that right had not been challenged on a theoretical basis since its formulation even though its implementation had not been without difficulty and certain long-standing demands for its application had not yet been satisfied. At a time when the collapse of communism in the countries of Eastern Europe and elsewhere seemed to favour the emergence of frenzied nationalism, it might perhaps be useful to engage in further thinking about the meaning and scope of that vague and appealing right, as well as on ways on implementing it in present world conditions. The right of

peoples to self-determination could be exercised only on the basis of certain criteria which had yet to be defined. The forms it could assume should be differentiated in the light of a large number of considerations reflecting specific historical, geographical, political, economic and cultural contexts and, above all, the desire to live together in an entity where all rights were respected. Self-determination did not necessarily imply the formation of a State, for it could also mean a certain amount of autonomy within a larger unit, such as a State or federation. Never in the course of history had so many States emerged in such a short time and the world had seen where that desire for separatism could lead and what violence it could engender (as in certain break-away republics of the former Soviet Union and in the former Yugoslavia, in Bosnia and Croatia).

26. Although history did not always repeat itself to the letter, a number of features certainly recurred, and that was why it was high time for the international community to learn from past events in order to act without delay as soon as real threats loomed rather than waiting for the irreparable to occur. It was strange that at a time when the entire world was beginning to understand that States which violated human rights could no longer shelter behind the principle of national sovereignty in order to ill-treat their people, the right to self-determination was being claimed by an increasing number of groups which were moved not by the desire to promote human rights or democracy but rather by a wish to pursue a policy of racial or religious superiority. Expressions that were both frightening and ridiculous, such as ethnic homogeneity or purity, used to justify separatist theories were ominous, since all the States of Europe, ever since their foundation, were simply a conglomerate of different peoples. The culture to which they had given rise was all the richer because its sources were more varied and because the tolerance facilitating the integration of the contribution of each one had been greater.

27. Quite apart from decolonization proper, the right of peoples to self-determination had been used above all to dismember vanquished countries or empires, thus sowing the seeds of future wars. The concept of self-determination, formulated in an unrestricted manner and regarded as an inalienable right, had been born of specific historical and political circumstances which had since completely changed. The explosion of separatism, even in democratic countries, constituted a threat to international peace and security. The right of peoples to free self-determination, if it was to be universal, implied a clear definition of the concepts of nations, peoples, States and minorities. What exactly did that right cover, by what conditions was it governed, how was it to be exercised, and what were its limits and scope? And that raised the question of the rights of minorities, which was also a thorny issue since it was tantamount to recognising the hegemony of a certain group over a territory. Yet there were inevitably other minorities in that territory whose rights have to be guaranteed and that meant that the legitimacy of a State could only really be based on democracy. Thought should also be given to other major questions, such as the relationships between community and nation, community and territory, religion and society and authority and society.

28. She concluded by quoting Amin Maalouf, a Lebanese writer, for whom "the right of peoples to dispose of their minorities carries no more weight than the right of States to dispose of their peoples. Neither is admissible if it is contrary to the sole immutable value, the only one that deserves to be respected by the post-cold war world, namely, the freedom of the individual."

29. Mr. BLAKE (Service, Peace and Justice in Latin America) said that the General Assembly of OAS, the United Nations General Assembly and the Commission on Human Rights had all deplored the foreign intervention that had taken place on 20 December 1989 in Panama, considering that it constituted a flagrant violation of international law as well as of the independence, sovereignty and territorial integrity of that country. Furthermore, the right of the victims of flagrant violations of human rights and fundamental freedoms to restitution, compensation and readaptation had been fully recognized by the Commission in its resolution 1990/35. Compensation should cover all damage suffered as a result of such violations, and it was inadmissible that the international community should demand compensation from certain aggressor States and not others on the pretext that the latter were great Powers.

30. Panama's invasion by the United States army on 20 December 1989 had had serious consequences for the country. According to various sources of information, between 500 and 2,000 persons had been killed, 5,300 persons had been detained arbitrarily, weapons, armoured vehicles, aircraft and Panamanian craft had been confiscated and not returned, and material damage was estimated at about $US 2 billion. Furthermore, the social situation had deteriorated considerably as a result of the invasion: unemployment had increased from 21 to 33 per cent and 42.1 per cent of the population lived below the poverty line. Yet the United States had on several occasions refused to make good the damage caused to the State of Panama, to the families of the victims and to the residents of the El Chorillo district, which had been completely destroyed during the invasion. His organization urged the Commission to intercede with the United States of America and persuade it to put an end to its interventionist policy and the military occupation of that part of Panamanian territory not covered by bilateral agreements, and to respect to the letter the Torrijos-Carter treaties, and also to compensate the Panamanian State and its population for the damage caused by the military aggression of 20 December 1989.

31. Mrs. GONZALEZ (Latin American Federation of Associations of Relatives of Disappeared Detainees) said that in her view the right of the peoples of Cuba, Western Sahara and East Timor to self-determination was being shamelessly flouted at the present time. Indeed, Cuba's sovereignty and, consequently, right to self-determination were constantly being violated by another State by means of a unilateral embargo. No people could enjoy the right to self-determination if it was prevented from freely embarking upon its economic, political or technological development through trade and other relations with other States. Furthermore, since the adoption of the Torricelli law, the sovereignty of other countries was also being violated by the United States which prevented them from having trade and political relations with Cuba. That measure, which had been condemned by the United Nations General Assembly, was having inhuman consequences that compromised the very existence of the Cuban people. The Commission should therefore should consider ways of preventing such unjust measures from arbitrarily affecting the country.

32. The right of the Sahraoui people to self-determination had been recognised and endorsed by many United Nations resolutions and confirmed by the elaboration of a peace plan unanimously approved by the Security Council in April 1991. Unfortunately, the military and administrative presence of a country which desired to impose by force what it was forbidden to do by international law had, since 1975 blocked the implementation of those resolutions. It was no mystery why Morocco had always opposed the holding of a referendum enabling the people concerned freely to decide its future; indeed, it was the certainty that a referendum would result in independence for Western Sahara that had induced

Morocco to launch its military campaign at the end of 1975. It was for the same reason that it now opposed the implementation of the peace plan endorsed by Security Council resolution 690 (1991).

33. Lastly, East Timor was the prime example of the continuing violation of a peoples rights by another State. The very concept of the right to self-determination seemed to be alien to the Indonesian authorities, which were committing all manner of flagrant violations of the human rights and fundamental freedoms of the people of Timor. The Maubere National Resistance Council, whose membership included all the movements, parties and associations of East Timor struggling for self-determination and the independence of the occupied territory of East Timor, had on several occasions expressed its desire to participate, without prior conditions, in a constructive dialogue under the auspices of the United Nations in order to consider all possible solutions to the conflict. Unfortunately, that proposal had never been taken into consideration by the Indonesian Government. The response of the Indonesian military forces to peaceful demonstrations for independence was becoming increasingly violent and the number of cases of intimidation, arbitrary arrests and torture was increasing. In the view of her Federation, the problem of East Timor should be settled as a matter of urgency.

34. Mrs. GRAF (International League for the Rights and Liberation of Peoples) said it was unfortunate that there was still no competent international body with jurisdiction to handle accusations of violations of the norms of international law by States. Only States or international organizations controlled by States could invoke the assistance of the International Court of Justice. On the other hand, the Permanent People's Tribunal, which was the parent body of the International League, responded to appeals by peoples. The right to self-determination of various peoples had been reaffirmed in General Assembly resolutions and that of the Tibetan people in resolutions 1723 (XVI) and 2079 (XX). After the right of every people to existence there was no more fundamental right than that of self-determination, on which peoples depended for the exercise of most of their other rights.

35. It generally recognized that the Tibetans were a distinctive people but the critical question was whether they were a people entitled to exercise the right to self-determination. UNESCO laid down four criteria in that respect, namely, commonalities in history, language and culture, enough persons sharing a common identity and experience, the existence of institutions to give expression and effect to those commonalities, and the will of a people to assert the right to self-determination. According to the findings of the Permanent People's Tribunal, the Tibetan people satisfied those criteria and consequently were entitled to exercise the right to self-determination. In exercising that right, the Tibetan people might choose independence or some form of association with China or another national State. That right to self-determination must be exercised not only by the Tibetans now living in the territory that the Peoples Republic of China called the "Tibet autonomous region", but also those living in parts of historic Tibet which had been annexed to neighbouring provinces.

36. Although the Permanent People's Tribunal recognised that it was difficult to give precedence to the "right of peoples to self-determination" over the maintenance of international peace and the development of friendly relations among nations (article 1 of the United Nations Charter), it considered that the right to self-determination should be regarded as the basis of an ongoing process of reconciliation.

37. With respect to Western Sahara, the International League wished to recall that resolution 690 (1991), adopted unanimously by the Security Council, had been accompanied by a peace plan indicating the various stages preceding and following the cease-fire and the conditions that had to be satisfied in order to hold a referendum on self-determination. However, Morocco was continuing its efforts to prevent the implementation of that plan. Peaceful demonstrations by the population calling for a referendum had, moreover, been brutally suppressed and it was alleged that hundreds of persons were detained in unacceptable conditions. Furthermore, it seemed that MINURSO officials were confined to their hotels to prevent them from having contact with the population. If the Security Council did not wish to be suspected of partiality, it was time that it did something to ensure respect for its resolutions as it had done in other situations and, specifically, to ensure implementation of the peace plan it had proposed with a view to the settlement of the conflict.

38. The International League had also, on many occasions, made efforts to have the right of the Kurdish people to self-determination recognised. Since a resolution in favour of "a federated Kurdish State within a democratic Iraq" had been adopted in October 1992 by the Kurdish Parliament, recently constituted by the Kurds of Iraq, the Ministers of Foreign Affairs of Turkey, Iran and Syria had held a conference in order to thwart the self-determination aspirations of the Kurds of Iraq, Iran and Turkey, and to co-ordinate action against Kurdish resistance fighters in the frontier regions. Moreover, when it was claimed, through the perverse application of Security Council resolution 788 (1991), that the Kurdish population was being protected by the establishment in Iraq of a so-called protection zone, it was impossible to sanction unilateral incursions by Turkish aircraft and tanks into that territory. The Kurdish people were the target of implacable repression on the part of the Governments on which they depended. That was why the International League urged the Commission to support a peace plan for that area of the Middle East under which the fundamental rights of the Kurdish people would be recognised and respected.

39. Mr. TEITELBAUM (American Asscciation of Jurists) noted that the parallel application of the principle of non-intervention in the internal affairs of a State and the Universal Declaration of Human Rights had been supplanted by the so-called "right of interference". In point of fact, however, what was being built up on the ruins of existing international law was nothing other than the right of the strongest. In that context, an attempt was also being made to marginalize and weaken the machinery and competent bodies of the United Nations system by depriving them of the necessary financial and human resources, by adopting decisions contrary to the sound functioning of such machinery, and by creating ad hoc institutions on the fringes of existing multilateral bodies.

40. International public opinion, conditioned by biased and even distorted information was favourable to that new idea of the "right of interference". What did it constitute in practice and what were its recent manifestations? In the course of the invasion of Grenada, that had been embarked upon to protect American residents, disproportionately large means had been used to achieve its objective; the United States invasion of Panama, which had constituted outright military aggression with dramatic consequences, had been justified by the need to seize a former lackey in order to try him for drug trafficking; in Nicaragua, the United States had assisted "freedom fighters" and had mined ports in order to weaken the Sandinist Government - that had constituted flagrant intervention in the internal affairs of Nicaragua and had duly been condemned by the International Court of Justice. When Iraq had invaded Kuwait, the Security Council had implicitly authorized the launching of a war, delegating its conduct

to a coalition of countries, thereby renouncing the prerogatives conferred upon it by Articles 42, 45 and 47 of the United Nations Charter, and above all deciding not to await the results of the coercive measures adopted previously. The embargo imposed by the United States for 30 years against the Republic of Cuba was also completely illegal and contrary to the United Nations Charter, and in addition the recent Torricelli law constituted interference in the conduct of international economic relations. Even more recently, the air attacks against Baghdad and other parts of Iraq by the armed forces of the United States, the United Kingdom and France had neither been ordered nor authorized by the Security Council.

41. On the basis of those precedents, it could conceivably be proposed that Israel should be bombed in order to force it to respect Security Council resolutions and that Morocco should be attacked to prevent it from hampering the activities of MINURSO, which was responsible for supervising the referendum in Western Sahara. Yet oddly enough that "right of interference" which was invoked so widely in certain circumstances, seemed to lose its appeal elsewhere, and the people of East Timor continued to experience a virtual genocide whereas the people of Haiti were still waiting for effective assistance from the international community in restoring the democratic regime of President Aristide. That so-called "right of interference" had absolutely no legal basis, nor was it based on the three fundamental criteria underlying any just international action, namely, objectivity, impartiality and non-selectivity. The American Association of Jurists considered that the so-called "right of interference" was nothing more than an attempt to revive the former colonialist practices of the great Powers.

42. The international community should, in respect of its obligations to the nations of the world and the individuals comprising them as subjects of international law, comply strictly with the United Nations Charter and other international instruments which could, of course, be improved. The American Association of Jurists considered, for example, that it was necessary and urgent to do away with the power of veto in the Security Council and to increase its membership. It was, furthermore, vital that action taken by the international community should be based on the imperative norms of international law, namely, those which accorded equal recognition to the main components of the international community and not only States of the East or West, the developing countries or the countries of this or that continent. In the view of his Association, respect for the sovereignty of the States constituted the guarantee of effective respect of human rights.

43. Mr. PREJEAN (International Indian Treaty Council) emphasized that the right to self-determination must be recognized, implemented and protected at every level of a legislative and judicial system, whether local, national or international. It was because that right had always been a key element in the struggle to achieve peace and justice throughout the world that it had been specifically mentioned in the United Nations Charter, in the two International Human Rights Covenants and in various resolutions adopted by the General Assembly. As indicated in two studies on the question carried out by the Sub-Commission on Prevention of Discrimination and the Protection of Minorities, the exercise of that right was a sine qua non condition for the development and survival of indigenous peoples. It would be well in that connection to take into account the conclusions and recommendations of the United Nations Seminar on the right to self-determination held in connection with the Second Decade to Combat Racism and Racial Discrimination at Nuuk, the capital of Greenland.

44. The International Indian Treaty Council called upon the Commission to adopt concrete resolutions addressing gross violations of the right to self-determination of peoples in several regions of the world, namely, in Palestine and in the occupied Arab territories, in Spanish Sahara as well as in East Timor which had been occupied since 1976 by Indonesia, whose response to claims for independence was a policy of violent repression designed to annihilate the people of Timor, in Bougainville where the Papua New Guinea Government had been shamelessly violating the rights of the population since 1990, and in Sri Lanka where the Tamil people had been denied most of their rights for over 40 years.

45. The year 1993 marked the hundredth anniversary of the illegal overthrow, on 17 January 1893, of the sovereign nation of Hawaii by United States colonial forces in violation of international law and the five treaties concluded between the Government of that country and the nation of Hawaii. The imperialist designs of the United States had also contributed to a large extent to the fall of other Pacific nations such as Guam, the Philippines, "American" Samoa and others. It should be borne in mind that, under Article 73 of the United Nations Charter, members of the United Nations administering non-self-governing territories were required to develop self-government and to assist them in the progressive development of their free political institutions. The International Indian Treaty Council therefore urged the Commission once again to list Hawaii among the territories eligible for decolonization, since the island had illegally been struck from that list in 1959 - in recognition of the inalienable right of the Hawaiian people to self-determination during 1993 which had been proclaimed International Year of the World's Indigenous People.

46. Mrs. NUNEZ (Commission for the Defence of Human Rights in Central America said that in her organization's view, the violation of the civil and political rights of the peoples of Central America was the corollary of the negation of their economic and social rights which, in turn, was the result of the consistent violation of their right to self-determination. Indeed, the history of Central America was nothing more than a long list of invasions and military occupation, aggression, embargoes and other acts constituting permanent interference in the internal affairs of its component countries. Her organization wished in particular to draw the Commission's attention to the situation in Panama which had been illegally invaded by the United States in 1989. For the past three years the Panamanian people had been denied its right to self-determination since the present Government had concluded bilateral agreements with the United States that in a way legalised the occupation, examples being the treaty of mutual assistance which entitled the United States to enquire into the origin of funds at the disposal of Panamanian banks or the agreement on the training of members of the forces of law and order under the assistance programme of the United States Department of Justice - two agreements that revealed that country's determination to maintain its domination over Panama in violation of the Torrijos-Carter treaties.

47. The United States also continued to interfere in Nicaragua's affairs by exerting pressure on - and through economic and political blackmail of - that country's present constitutional Government; that was immoral from every point of view. It had adopted the same attitude towards the Government of Costa Rica which it had threatened with financial reprisals to prevent it from applying an expropriation decision against an American owner of 16,000 hectares of land that were of vital importance from an ecological standpoint since they constituted the last dry tropical forest area in the entire Central American region. That pressure, which the Costa Rican Government was still resisting, obviously

constituted interference in Costa Rica's internal affairs and a violation of its right to dispose freely of its wealth and resources.

48. Furthermore, the United States maintained a considerable military presence in Honduras where it occupied certain parts of the territory to the detriment of that country's production capacity and environment. In addition, 5,000 members of the United States armed forces were also to arrive in the near future in Belize and Guatemala in the framework of its military co-operation with the Guatemalan Government; the result would obviously be the increased repression of the Guatemalan people. Lastly, the United States had recently reinforced the illegal and criminal blockade that it had imposed on Cuba for more than 30 years with the adoption of the Torricelli law in contravention of principles of international law and General Assembly resolution 47/19, by which all States were urged to refrain from promulgating and applying laws of that nature which violated the rights of an entire people. It was inadmissible that wealthy and powerful States should use their economic power to shape the internal policy of other States or to dictate their conduct on an international level; the Commission should not remain silent in the face of such behaviour.

49. The CHAIRMAN invited representatives of countries who had requested to do so to exercise their right to reply.

50. Mr. CHANDRA (India) said that, instead of distracting the Commission from its work by drawing attention to relations between India and Pakistan, the latter would be well advised to cease aiding and abetting terrorists who were at the root of the current situation in Jammu and Kashmir. He pointed out to the representative of Pakistan that, in an article in "The Muslim", a Pakistan newspaper, published in January 1993, the situation in the northern areas of the state of Jammu and Kashmir, which was illegally occupied by Pakistan, was described as being that of a colony that had been completely forgotten by the uncaring colonizer. Moreover, the representative of Pakistan had referred to certain books on Punjab; as a journalist, he could have been more objective and also indicated that the elections held in January 1993 in Punjab, during which there had been an 80 per cent turnout, had been highly successful.

51. Mr. HUSSAIN (Pakistan) observed that India was the main exporter of terrorism in south-east Asia and that such terrorism was the direct cause of the many deaths recorded in occupied Kashmir. Special training camps had been established for that purpose and it would be interesting to know the views of neighbouring countries about India's interference in their internal affairs. He was delighted by the interest shown by the Indian representative in Pakistan's press, and added that since he was such an avid newspaper reader he must be aware that "The Times of India" of 8 August 1992 mentioned the resentment felt by the Sikhs of Punjab province against the Indian Government. He emphasized that that article had appeared after the so-called elections referred to by the Indian representative. Moreover, the Indian Minister of Internal Affairs had clearly stated in the Indian Parliament on 12 August 1992 that the entire Indian part of Punjab had been tangibly separated from the Pakistan part by a barbed wire fence. In the circumstances, how could Pakistan have interfered in the internal affairs of India? There was a striking contrast between India's statements and its acts, which demonstrated that it was the main exporter of State terrorism - a field in which it had certainly acquired great experience.

52. Mr. GOONETILLEKE (Sri Lanka) noted that the representatives of non-governmental organizations who, at the previous meeting had called for recognition of the existence of a Tamil homeland in the north and east of the island and of a Tamil "people" with the right to self-determination, had failed to indicate that that claim had neither a historical nor a legal basis, and that Sri Lanka was the homeland of the Tamil people just as it was that of the Sinhalese and other ethnic groups living on the island. They had also omitted to mention that the group of Tamils known as the Ceylon Tamils who claimed the northern and eastern provinces of Sri Lanka comprised only 12.7 per cent of the population and that 2.3 per cent of that group lived outside those provinces. Nor had they explained that there was another group of Tamils, namely, the "Indian Tamils" or "Plantation Tamils", comprising about 5.5 per cent of the population and also living outside those provinces; that group was represented in the Government - a point which was not favourable to the creation of a separate Tamil State.

53. It was worth recalling that the Tamil population accounted for 18.2 per cent of the total population of Sri Lanka. The reason why the northern province was at present inhabited almost entirely by Tamils was that tens of thousands of Muslims and a large number of Sinhalese had fled, being threatened with death by members of the terrorist group known as the LTTE which, in 1990, had been practising "ethnic cleansing" to achieve its political objectives. In the eastern province, on the other hand, and despite mass forced eviction of thousands of Muslims and Sinhalese, Tamils were in a minority. Over 100 years previously, Sri Lanka had been divided into nine provinces by the colonial Power for purely administrative purposes and not on an ethnic basis; moreover, the northern and eastern provinces had been temporarily merged on the clear understanding that the merger would be subject to a referendum that had unfortunately not taken place owing to the obstruction of LTTE, which believed neither in democracy nor elections. There was no question of the Sri Lankan Government handing over power to a minority in the eastern province to the detriment of other communities, and even less as a result of threats by a group of terrorists. Contrary to what had been stated, his Government was prepared to share power, but only when negotiations on the subject had been completed and an understanding had been reached.

54. Mention had also been made of "foreign domination", but the fact remained that neither the Sinhalese nor the Tamils, nor yet the other communities living in Sri Lanka were foreigners; they were all citizens of Sri Lanka and enjoyed an equal right to live in any part of the island. If the Commission were to accept the requests made by the non-governmental organizations it would be interfering in the internal affairs of Sri Lanka and jeopardising the future of the Tamil population living outside the northern and eastern provinces. The tragic events that had followed the fragmentation of the former Yugoslavia offered a sad example of the possible consequences of dividing countries on the basis of race or religion. He did not think that the Commission was prepared to do something that might have those results. His delegation had already, in its previous statements on agenda items 4 and 9, described the measures that could be taken to satisfy the legitimate grievances of various groups, but such measures should be discussed by the parties at the negotiating table and not in a forum like the Commission.

55. Mr. DA SILVA (Portugal) pointed out, contrary to what had been stated by the Indonesian representative, the people of East Timor had never been able freely to exercise their right to self-determination. The United Nations General Assembly itself had rejected that allegation in its resolution 31/53 and

had not changed its position since. Moreover, the fact that Portugal bore a share of the responsibility for what had happened in East Timor at the beginning of the decolonization process did not in any way justify the interruption of that process following the brutal invasion of the area by Indonesian forces on 7 December 1975. He repeated once again that Portugal was not seeking to defend its own rights but was fighting for the rights of the East Timorese people to whom it had not only a moral and historical obligation but also a legal one in accordance with the relevant resolution of the Security Council and General Assembly. Lastly, if, as claimed by Indonesia, the majority of the East Timorese were in favour of integration with Indonesia, why did the Indonesian Government not allow a referendum to be held under the supervision of the United Nations? Why, then, did the Indonesian Government not allow non-governmental organizations such as Amnesty International to enter East Timor? What had it to hide from the outside world?

56. Mr. DOS REIS (Indonesia) said that, in view of its colonizing past, Portugal was in no position to present itself as a defender of the right of peoples to self-determination. The decolonization process initiated in East Timor during the 1970s might not have been perfect, but the Timorese were at present living in freedom, peace and stability and enjoying the benefits of progress and development, just like all other Indonesian citizens.

57. Mrs. MYINT (Observer for Myanmar) protested in the strongest possible terms against the allegations made against her country by the representative of International Educational Development. The Kayahs, whom she had called Karens, had their own State which was an integral part of the Union of Myanmar and in which they lived in peace and freedom. The so-called Government of the self-styled Karen State consisted of nothing but terrorist groups who were mainly deserters from the army and police who had gone underground and fled to the frontier areas of Myanmar. Although ostensibly placing the cause and interests of the Kayahs in the forefront, they were in practice unlawfully engaged in criminal activities and in no way represented the majority of the Kayah people. The latter, together with the Shans, the Kachins, the Mors, the Chins and others were ethnic groups which constituted the Union of Myanmar. They were neither under colonial or alien domination or foreign occupation. Her delegation categorically rejected all assertions to the contrary and resolutely opposed any action likely to impair the national unity, integrity and sovereignty of the Union of Myanmar.

58. Mr. HESSEL (France), speaking on a point of order, drew the Commission's attention to the difficulties experienced by certain delegations, including his own, as a result of delays in the publication and distribution of the French version of the Commission's documents on a large number of agenda items. He requested the Secretariat to ensure that all documents were ready in good time in the two working languages of the United Nations.

59. Mr. NZEYAMANA (Burundi) associated himself with the point made by the French representative and urged the Secretariat to make the necessary arrangements to ensure the distribution of all documents in French.

The meeting rose at 1 p.m.